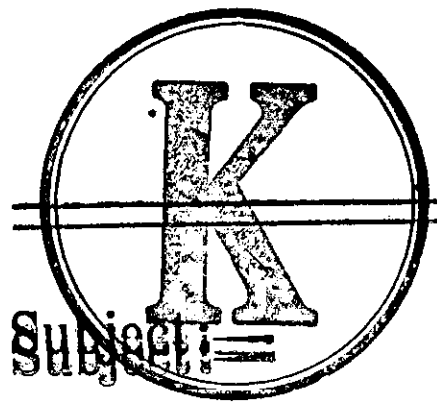
1942 **File No.** Irrig. II, '42



Legal DEPARTMENT
B. BRANCH

p.13(E)
1942

Subject:

Rules and Notifications under the Romoay Irrigation Act, 1879.

File No. Irrig. II, 42

Std. Sectt. Slip 24 B e.

CONTENTS

Legal Department File No: Irrigation II/42.

Sr. No.	Compilation No.	Subject	Pages
		B. Irrigation Act, 1879.	
1	U.R.to/S.V. No.1023 dt.4-2-42.	S.5 - Notification under reg. appln. and use of water of of certain rivers and tributaries by Government.	1-4
2.	U.R. to R.D.and P.W.D. No.1413 dt.17-2-42.	Application and use by of river water by Govt. for definite purpose	5.
3.	U.R. to P.W.D. No.2716. dt.27-3-42.	S.12 Notification under reg.removal of obstruction to the drainage Course.	7-9
4.	U.R. to R.D. No.3829 dt.14-4-42.	S. 12 and S.84(b) Notfns.under.-	11-15
5.	U.R. to P.W.D.(through R.D.)No.3050 dt.8-4-42.	Draft Notification.	17
6.	U.R. to P.W.D. No.5590 dt.6-7-42.	S.12 Notification under	19-20
7.	U.R. to P.W.D. No.8015. dt. 3-10-42.	S.12 amending Not. P.W.D. No.854/ 25639 dt. 29-1-1925.	21-23.
8.	U.R. to R.D. and P.D. No.9313 dt.21-10-40.	S.12 -Hypothetical injuries whether proper to use Provisions of for ,	25-26.
9.	U.R. to P.W.D. through R.D. No.8960 dt. 4-11-42.	Inviting attention to R.L.A.'s U.R. to P.W.D. No. 132 dt.7-1-41.	27
10	U.R. to P.W.D. No. 9321 10-11-42.	S.12 Notifications under	29-36.

V.VK.
5-5-56. 2 SC.

11/5
K.S.R.
11/5

Office of the R.L.A.

A revised draft notification is sent herewith.

O.C. Sd/-P.N.M.
dt/-3/2

Remembrancer of Legal Affairs.

U.R. to P.W.D. No., 1023 , dated the 4th February 1942.

V.VK.
3-5-42.

NOTIFICATION.

Public Works Department
Bombay Castle, February 1942

No. 4411/36. Whereas it appears expedient to the Government of Bombay that the water of the following rivers and their tributaries within the limits shown in the first column of the Schedule hereto annexed, should be applied and used by Government, for the purposes of the canals respectively shown against them in the second column of the said Schedule;

The Bombay Irrigation Act, 1879.

Now, therefore, in exercise of the powers conferred by section 5 of the Bombay Irrigation Act, 1879 (Bom. VII of 1879), the Government of Bombay is pleased to declare that the said water will be so applied and used, after the day of ----------1942.

*The date should be not earlier than 3 months from the date of notification).

Names of rivers.	Names of canals.
1	2
1. Nira river and its tributaries - from below the weir at Vir to the point where it joins the Bhima river near the Sangam village in the Sholapur District.	Nira Canals.
2. Bhima river-from the point of junction with the Nira river to the outskirts of the town of Pandharpur in the Sholapur District.	Nira Canals.
3. Godavari river and its tributaries- from below the weir at Nandur Madhmeshwar upto the point where the Railway line from Kopargaon to Ahmednagar crosses the river.	Godavari Canals
4. Pravara river and its tributaries- the portion between the Ojhar Weir and the Sangam with the Godavari river.	Pravara Canals.
5. Girna river - from below the weir at Thengoda to Malegaon.	Girna Canals.
6. Mutha river - so far as it lies within British India above the weir at Khadakwasla.	Mutha Canals.

Names of rivers .	Names of Canals.
7. Mula Mutha river- from the point of junction of the two rivers to the point of confluence with theBhima river near the boundaries of Ranjangaon and Pargaon villages of the Sirur Taluka of the Poona District.	Mutha Canals.

By order of the Governor of Bombay,

Secretary to Government.

V.VK.
3-5-56.

Office of the R.L.A.

Section 5 of the Bombay Irrigation Act, 1879, provides that whenever it appears expendient to the Provincial Government that the water of any river should be applied or used by the Provincial Government for the purpose of any existing or projected canal the Provincial Government may by notification declare that the said water will be so applies or used. Action can be taken under this section by the Provincial Government when (1) the water of aby river is to be applied for the purpose of any existing or projected canal or (2) when it is to be used by the Provincial Government for such purpose. It would be competent to the Provincial Government to take action under this section also when the water is to be Applied and used by it for the purpose mentioned above. It will be necessary for Government to specify definitely in the notification is each case whether the water is to be applied for such purpose or whether it is to be used for such purpose or whether it should be applied and used for such purpose . It is presumed that the intention in this case is that the water is to be applied and used for the purpose mentioned in the notification. It would not, therefore, be appropriate to use the expression "applied or used " in the notification. The word "or" in the P.W.D. draft notification at page 57 ante has therefore been deliberately changed and the word"and " substituted in the revised draft notification sent by the R.L.A. at page 59 . The change is on the lines of the previous notifications scrutinised in this Department and sent to the P.W. D. (see U.R. to P.W.D. No.4262 dated the 25th May 1940 and No. 6534 dated the 25th July 1941)-.

~~O.C.~~ Sd/-P.N.M.
16/2
Remembrancer of Legal Affairs.

U.R. to R.D. and P.W.D. No. 1413 dated the 17th February 1942.

V.VK.2[illegible]5/56.

Office of the R.I.A.

The draft notification on page 83 ante is legally in order.

~~O.S.~~ Sd/-N.K.D.
dt/-26/3.

For Remembrancer of Legal Affairs.

U.R. to [illegible]x P.W.D. No.2756 , dated the 27th March 1942.

V.VK.
~~3-5-56~~.

NOTIFICATION.

Public Works Department,
Bombay Castle, March 1942

The Bombay Irrigation Act, 1879.

No.S. 54/4926:- Whereas it appears to the Government of Bombay that injury to the public health or public convenience may arise from the obstruction of the natural drainage course situated under slab-drain No. 15 in mile No.108/7 of the Bombay-Poona Road caused on account of its being blocked by the construction of a compound wall of the Cantonment House No.O.B.482 Kirkee Cantonment, bounded on the North by Station Road, G.I.P.R.S. No. 12 on the South by Military Football ground S.No.106 on the East by Station Road No-12.and on the West by the Bombay Poona Road Survey No.65.

Now, therefore, in exercise of the powers conferred by section 12 of the Bombay Irrigation Act, 1879(Bom.VII of 1879) and in supersession of Government Notification in the Public Works Department No.S.54/12693,dated 18th July 1938, the Government of Bombay is pleased to order the removal of the said obstruction to the said drainage course.

By order of the Governor of Bombay,

V.VK.
3-5-56.

Secretary to Government.

Office of the R.L.A.

The requisite two revised draft notifications are sent herewith.

2. It is presumed, the Prant Officer, S.D. ~~Belg~~ Belgaum is to be appointed to exercise the powers under sections 38 and 39 of the Act in respect of claims for compensation arising from the removal of the bund No. 1. The second draft notification under section 4 provides accordingly.

Id/-W.K.D.
dt/-14/4
for Remembrancer of Legal Affairs.

U.R. to R.D. No.3229, dated the 14th ~~April~~ April 1942.

V.VK.
3-4-1956.

The Bombay Irrigation Act, 1879.

NOTIFICATION.

Revenue Department.

Bombay Castle, 1942.

No. .- Whereas it appears to the Government of Bombay that injury to the public health has arisen and may arise from the erection of a bund below the railway bridge across the portion of the Lendi Nuâla which lies between revision survery numbers 301 and 304 of Belgaum in the taluka and district of Belgaum;

Now, therefore, in exercise of the powers conferred by section 12 of the Bombay Irrigation Act, 1879(Bom.VII of 1879) the Government of Bombay is pleased to prohibit the erection of any bund, and to order the removal of the existing bund, across the said portion of the Lendi Nulla.

By order of the Governor of Bombay.

Secretary to Government.

V.VK.
3-5-56.

NOTIFICATION.

Revenue Department.

Bombay Castle, 1942.

No. -.In exercise of the powers conferred by clause (b) of section 4 of the Bombay Irrigation Act, 1879(Bom. VII of 1879) the Government of Bombay is pleased to invest the Assistant or Deputy Collector in charge of the Southern Division , Belgaum, with the powers of the Collector, under sections 38 and 39 of the said Act, in respect of claims for compensation, arising from the removal of the bund ordered under Government Notification Revenue Department, No.

dated 1942.

The Bombay Irrigation Act, 1879.

*Here insert the number and date of the Notification on the previous page.

By order of the Governor of Bombay

Secretary to Government

V.VK.

Office of the R.L.A.

The draft notification on page 3, as amended, is in order. Before it is issued the P .W.D. is requested to fill in the Schedule correctly, ~~xx xxxx~~ after inserting serial Nos. from No. 1 onwards instead of from No.~~22~~ 43, onwards.

Id/-W.E.D.
dt/-7/4

For Remembrancer of Legal Affairs.

U.R. to P&W.D. (through R.D.) No.3050, dated the 8th April 19 8.

V.VK.

3-5-58.

R.I.No.5529 dated 25-8-42.

Submitted.

2. Attention is invited to this office No.3050,dated the 8th April 1942. on page 49 ante or p.35 slipped A in Irrigation II/42. In the proof copy of the notification (attached the serial numbers of entries in the Schedule have been given from 43 onwards instead of from 1 onwards as advised in this office No.3050, dated 8th April 1942(p.49) . The reasons given by the Superintending Engineer,D.I.C.in his note on p.57 ante for the proposed change,are that such numbering i.e.from No.43 will indicate that this is not the first notification of its kind and also it may avoid possible confusion and mistakes as there would be two sets of nalas with similar serial numbers on the same canal. The P.W.D. in view of these reasons is inclined to p.56ante to accow the renumbering in the proof copy, to stand, The R.L.A. is, however requested to see efore the notification is finally issued.

3. It is true that there may be two sets of nalas bearing the same serial numbers on the same canal but their distinguishing marks would not be the serial numbers but the description (vide Columns 2 and 3 of the Schedule). . However as it is apprehended that the same serial numbers may create confusion and lead to mistakes, there is no legal objection to their numbering from 43 onwards as proposed by the P.W.D.

V.V.K.
3-5-56.

4. From the drafting point of view , it is necessary that the drainage courses to be described in the accompanying Schedule to the proposed notification under section 12 of the Bombay Irrigation Act, 1879(Bom.VII of 1879) should be given serial Nos.from No.1 onwards, instedd of from No.43,onwards. As this notification and any nâtification is ued under the said section, will be self-contained and read separa ely, there is no possibility of any confussion or mistake, to arise, because serial num ering in the case are given from No.1 ., onwards consequential changes will have to be carried out in last column of the Schedule,as also in the plan which accompanied theSchedule, as reported by the Superintending Engineer, D.I.C. on p-57 and this may take time, the numbering of the serial Nos. from Nos..43 onwards, in the present case, may be allowed to stand,but in future in such cased the numbers should be given from No.1 onwards and the drainage courses should be described in the Schedule and shown in theplan, accordingly.

However in view of the fact that the Serial Nos. in the present case are given from No.1,

5. If the D.S. agrees with the view taken in para.4 above, the P.W.D. may be informed as in the said para.4, or if the D.S. is not inclined to inform the P.W.D. fully as in para. 4 above, alternative reply may be :-

"Seen and returned."

Sd/-B.B.P.
3/7/42.

As at A. D.S.

Id/-N.K.D.
dt/-4/7.

V.VK.
3-5-56.

NOTIFICATION.

Public Works Department

Bombay Castle, 1942.

Bombay Irrigation Act 1879.

No.S. 54/18484:- In exercise of the powers conferred by section 12 of the Bombay Irrigation Act, 1879 (Bom.VII of 1879) the Government of Bombay is pleased to amend Government Notification in the Public Works Department No. S-54/25639 dated the 29th January 1925, as follows, namely:-

In the said notification,

(a) after the words "the Pravara River" the words "and between the Pravara Right Bank Canal and the Mula River" shall be inserted; and

(b) in the Schedule, after the entry at serial No. 34A, the following new entries shall be inserted namely:-

Here insert A - A on pages 5-6 ante.

By order of the Governor of Bombay,

Secretary to Government.

V.VK.
3-5-56.

Office of the R.L.A.

Government Notification in the Public Works Department No.S-54/25639, dated the 29th January 1925 prohi its the formation of obstruction f the natural drainage courses ly'ng between the Pravara Right Bank C_anal and the Pravara River. From the entries relating to Serial Nos. 35,36, 37, 38.and 39 in the Schedule at pages 5-6 ante (in which it is stated that the drainage course j ins the Mula River), the plan sent wi h the papers and informal inquiries made in the P.W.D. it ap,ears that the new draina-e courses lie between the Pravara Right Bank Canal and the Mula River, and not between the Pravara Right Bank Canal and the Pravara River. Therefore , it will not be legally feasible to insert them entries in the Schedule to the said notification without making a corresponding change in the body thereof. A revised draft notification carrying out the changes is sent herewith. Before it is issued the P-W-D- should verify if the revised draft notifi ation correctly carries out the intention.

Id/-N.K.D.2/10
For Remembrancer of Legal Affairs.

U.R. to P.W.D. No., 8015 , dated the 3rd October 1942.

V.VK.
3-5-56.

Office of the P.L.A.

Section 12 of the Bombay Irrigation Act provides inter alia, that whenever it appears to the Provincial Government that injury to the public health, or public convenience, or to any canal or to any land for which irrigation from a canal is available, has arisen or may arise from the obstruction of any river, stream or natural drainage course, the Provincial Government may prohibit the formation of any such obstruction. The provisions of this section, therefore can be used only when an injury of the kind mentioned in the section has arisen or may arise. The words "may arise" read with the words "when ever it appears to the Provincial Government" clearly indicate that the injury must be one which in the opinion of the Provincial Government is in all probability likely to arise from the obstruction caused. The section cannot be used in cases where no injury has arisen or where from the facts it cannot be said that an injury will in all probability arise. It appears from the P.W.D. office note dated 19th July, 1940, at p.31, that no injury of the nature referred to in the section has so far been caused, but it is stated that "it cannot be said that no such injury will be caused in future also" The injury apprehended is therefore only hypothetical and in such cases, as stated above, it will not be proper to use the provisions of section 12.

2. It is stated by by Secretary, P.W.D. in his note atp. 36 that what is wanted is power to remove an obstruction or to regulate the placing of obstructions. This power is already conferred on Government by section 12 and can be used at any time when the Provincial Government is satisfied that the obstruction has caused or will probably cause injury of the kind referred to in the section.

3. As regards the water rates , as stated in R.L.A.'s previous opinion, these can be levied under section 44 if P.W.D. is satisfied that the provisions of paragraph 2 of this section are satisfied.

Sd/-G.R.Dhurandhar,
Remembrancer of Legal Affairs

U.R. to R.D. & F.D.No. 9313 d/-21st October 1940.

V.VK.
3-5-56.

Office Of The R.L.A.

The draft notification as slightly amended is in order. Attention of theP.W.D. is invited to R.L.A.'s U.R. to P.W.D. No, 132 ,dated the 7th January 1941.

O.C.— Id/-H.K.D.
dt/-./11

Remembrancer of Legal Affairs.

ID/-
dt/-4/11

U.R. to P.W.D. (through R.D.) No. 8960 , dated the 4th November 1942.

Office of the R.L.A.

In place of the draft notification on pages 15,25,and 49-51, revised draft notifications are sent herewith.

Id/-H.K.P. 18/11
For Remembrancer of Legal Affairs

U.R. to P.W.D. No, 9321, dated 19-11-1942.

V.VK.
3-5-56.

NOTIFICATION

Public Works Department.

Bombay Castle, November 1942.

Bombay Irrigation Act, 1879.

No.3.54/20772-B.- Whereas it appears to the Government of Bombay that injury to the public health, or public convenience, or to the canal or to the land for which irrigation from a canal is available, may arise from the obstruction of the natural drainage-courses described in the Schedule appended hereto;

Now, therefore, in exercise of the powers conferred by section 12 of the Bombay Irrigation Act, 1879(Bom.VII of 1879), the Government of Bombay is pleased to prohibit within such limits of the aforesaid natural drainage-courses as lie between the Khatodi Canal and the Mahekri River on one side and the Sina River on the other the formation of any such obstructions.

SCHEDULE

Here insert A-A on page 21 post.

By order of the Governor of Bombay,

Secretary to Government.

V.VK.
3-5-50.

NOTIFICATION.

Public Works Department.

Bombay Castle , November 1942.

Bombay Irrigation Act, 1879.

No.S-54/20772-C.- Whereas it appears to the Government of Bombay that injury to the public health, or public convenience, or to the canal or to the land for which irrigation from a canal is available may arise from the obstruction of the natural drainage-courses described in the Schedule appended hereto;

Now, therefore, in exercise of the powers conferred by section 12 of the Bombay Irrigation Act, 1879 (Bom. VII of 1879), the Government of Bombay is pleased to prohibit within such limits of the aforesaid nautral drainage-courses, as lie between the Mandavgoan Canal and the Mandvi River, the formation of any such obstructions.

SCHEDULE

Here insert A-A on p.29 post.

By order of the Governor of Bombay,

Secretary to Government

V.VK.
~~5-5-1950~~.

NOTIFICATION

Public Works Department.

Bombay Castle, November 1942.

Bombay/~~Bombay~~ Irrigation Act, 1879.

No.S-54/20772-A .- In exercise of the powers conferred by section 12 of the Bombay Irrigation Act, 1879 (Bom. VII of 1879), the Government of Bombay is pleased to amend Government Notification in the Public Works Department No..-S-54/27087-B dated the 25th July 1932, as follows,~~:~~ namely:-

(1) In the Schedule appended to the said notification-

(a) for entries bearing serial Nos. "20" and "23" under the heading "Main Canal" the following entries shall be substituted:-

"20 Nala of culvert No.10 at mile 10 & furlong 2	Loni Vynkanath	72,78,358,361, 91,81,89,86,87,111-3,2,4,1,7 N.D.Road 5,
	Shirasgaon	184,183,182,181,180, 194,193,192,191,188, 187,186,185,346,347 joins nalla.
	Shirasgaon	10.9,8,144,62,63,66 67,69,72,73,74,94,95 97,98,99,100,101,102 103,104,105,143,142, 2,7,6,
	Chimla	226,226,227,228, 229,248,249,250, 252,253.
	Wangdari	68,94,93,92,91,88, 82,81,80,71,70,69, joins Ghod river,
23 Nala of escape No. 4 at mile 11 and furlong 2	Loni Vyankanath	100,101,103,104, 362,118,115,144,148, 169,170,173,178,179, 180, joins Nalla No. 20.

(b)(i) for the heading "Shrigonda Distriburary" the heading "Wangdari Distributary" shall be substituted;

(ii) in the column for serial No.1 for the figures "1" and "3" under the heading

"Wangdari" "Minor" and "1" and "2" under the heading "Wadgaon Minor," the figures "4","5" and "6" and "7" and "8" shall be substituted respectively.

(iii) the headings "Wangdari Minor" and "Wadgaon Minor" shall be deleted;

(c)(i) to the entries under the heading, "Main Canal", the following shall be added, namely:-

(Here insert A-A on pages 43-44 ante).

(ii) to the entries under the heading, "Belwandi Distributary ", the following shall be added, namely:-

(Here indert A2 to A3 on page 44 ante).

(iii) to the entries under the heading, Chimbla Distri utary",the following shall be added , namely:-

(Here indert A4 to A5 on pages 44.45 ante).

(iv to he entries under the heading, "Wangdari Distributary", the following shall be added, namely :-

(Here insert B-B on page 45 ante).

2.To the Schedule appended to the said notifation, the following shall be added , Namely:

(Here insert C to D on pages 45-46 ante).

By order of the Governor of Bombay,

Secretary to Government.

V.VK.
3-5-56. C.4